
STATUTORY INSTRUMENTS

1992 No. 1672 (S.159)

ROADS AND BRIDGES, SCOTLAND

The Road Works (Sharing of Costs of Works) (Scotland) Regulations 1992

<i>Made</i>	- - - -	<i>14th July 1992</i>
<i>Laid Before Parliament</i>		<i>15th July 1992</i>
<i>Coming into force</i>	- -	<i>1st January 1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 144 and 163(1) and (3) of the New Roads and Street Works Act 1991⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

1. These Regulations may be cited as the Road Works (Sharing of Costs of Works) (Scotland) Regulations 1992 and shall come into force on 1st January 1993.

2.—(1) In these Regulations—

“the Act” means the New Roads and Street Works Act 1991;

“authority” means a roads authority, bridge authority or transport authority;

“the Code” means the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” dated June 1992, and approved by the Secretary of State on 14th July 1992 as revised or re-issued from time to time;

“works” means major works for roads purposes, major bridge works or major transport works.

(2) For the purposes of these Regulations “allowable costs” means all the reasonable costs of the measures needed to be taken for the purpose specified in section 143(1) of the Act except costs incurred—

(a) in preparing the initial set of plans and estimates in relation to those measures (but not in preparing any further plans and estimates which the authority may require); and

(b) in relation to the undertaker’s apparatus placed in a road after the undertaker was given notice as mentioned in section 144(2)(a) of the Act.

(3) A reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations.

3. Save as provided in regulations 7 and 9, in cases where works are initiated by an authority and an undertaker executes measures which need to be taken in respect of his apparatus because of those works, the authority shall pay to the undertaker a sum equal to the allowable costs incurred by the undertaker in taking those measures, provided that the authority shall pay only 82 per cent of the said allowable costs if the authority pays to the undertaker a sum equal to 75 per cent of the estimate of the said 82 per cent pursuant to sub-paragraph (a) of regulation 9.

4. Save as provided in regulation 7, in a case where works are initiated by an authority and the authority executes measures which need to be taken in respect of apparatus of an undertaker because of those works, the undertaker shall pay to the authority a sum equal to 18 per cent of the allowable costs incurred by the authority in taking those measures.

5. In a case where works are initiated by an authority and are done by the authority, an undertaker, whose apparatus is moved by an authority at the request of the undertaker solely because of a change in the type of road construction (not involving an alteration in the depth of cover to a depth less or, as the case may be, greater than the acceptable depth referred to in Appendix B to the Code), shall be liable to pay to the authority a sum equal to the whole of the allowable costs incurred by the authority in moving the apparatus.

6.—(1) Save as provided in regulation 7, in a case where works are initiated by a person other than an authority in its capacity as such or an undertaker and for the purposes of that person, and, because of those works, measures need to be taken in respect of apparatus—

- (a) if the authority takes those measures, the undertaker shall pay to the authority a sum equal to 18 per cent of the allowable costs incurred by the authority in taking those measures;
- (b) if the undertaker takes those measures, the authority shall pay to the undertaker a sum equal to the allowable costs incurred by the undertaker in taking those measures, provided that the authority shall pay only 82 per cent of the said allowable costs if the authority pays to the undertaker a sum equal to 75 per cent of the estimate of the said 82 per cent pursuant to sub-paragraph (a) of regulation 9.

(2) For the purposes of this regulation, in calculating the cost of taking measures, there shall be taken into account in favour of the undertaker any sum which is recoverable from the person for whose purposes the works are done, irrespective of whether or not such a sum is actually recovered from that person, or any sum which would have been recoverable if the person for whose purposes the works are done were not the authority.

7.—(1) In a case where works consist of, or include, major bridge works, an undertaker shall not be liable for costs in respect of the provision of adequate space in the structure of the bridge or of sufficient strength in the bridge to accommodate the undertaker's apparatus in the bridge, but this paragraph shall not apply to the cost of any ducts, pipe bays, hangers or other provision for housing or supporting the apparatus within such space nor to the provision of adequate space or adequate strength to accommodate the apparatus of any undertaker installed in the bridge after the execution of such works other than the installation, replacement or modification (not involving enlargement) of apparatus previously installed in the bridge prior to the execution of such works.

(2) No costs shall be allowable to an undertaker in respect of apparatus placed in a road after the authority has given to the undertaker notice, pursuant to section 144(2)(a) of the Act, of its intention to execute the works—

- (a) in the case of works consisting of major bridge works comprising a replacement of the bridge, not more than 10 years before those works are executed;
- (b) in the case of any other works, not more than 5 years before those works are executed.

8.—(1) In a case where, under these Regulations, an undertaker is liable to make a payment to an authority or an authority is liable to make a payment to an undertaker in relation to measures

which need to be taken in respect of the undertaker's apparatus, there shall be taken into account in favour of the authority—

- (a) if those measures result in a betterment of the undertaker's apparatus, a sum equal to the benefit which the undertaker gains as a result of the betterment calculated in accordance with Appendix F of the Code;
- (b) if those measures result in a postponement of the need to renew the undertaker's apparatus, a sum determined in accordance with Appendix E of the Code.

(2) For the purposes of this regulation "betterment" shall be determined in accordance with Appendix F of the Code.

9. Allowable costs under any of the provisions of these Regulations shall be payable as follows:—

- (a) in the case of any payments due from an authority pursuant to regulations 3 and 6, the authority may pay to the undertaker a sum equal to 75 per cent of the estimate of 82 per cent of the allowable costs in a single lump sum before the works begin or, if the authority and undertaker so agree in the case of works of an estimated duration of more than three months, by instalments of such amounts payable at such times during the execution of the works as the authority and undertaker agree;
- (b) after the works have been completed, the person to whom the allowable costs are due ("the creditor") shall issue to the person from whom they are due ("the debtor") an account of the allowable costs and within 35 days of that account having been issued the debtor shall pay to the creditor a sum equal to the allowable costs, provided that in any case where an authority has made a payment or payments pursuant to sub-paragraph (a) above—
 - (i) the authority shall pay to the undertaker the balance of the estimate together with any further sum equal to the amount by which the proportion of allowable costs to which the undertaker is entitled exceeds the estimate;
 - (ii) the undertaker shall refund to the authority a sum equal to the amount by which the sum paid by the authority pursuant to sub-paragraph (a) of this regulation exceeds the proportion of allowable costs to which he is entitled.

10. These Regulations shall not apply to a permission under section 109 of the Act, a consent under section 120 of the Act or an agreement to house apparatus in a bridge structure or to the costs of removal, or changing the position, of apparatus pursuant to section 121 of the Act.

St Andrew's House,
Edinburgh
14th July 1992

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the sharing of costs between the roads authority, bridge authority or transport authority (“the authority”) and the undertaker where the undertaker’s apparatus in a road is affected by major works for roads purposes, major bridge works or major transport works (“the works”) and measures (“protective measures”) are required in relation to that apparatus in consequence of the works or in order to facilitate their execution.

Where the works are initiated by the authority and the protective measures are taken by the undertaker, the authority shall pay to the undertaker the whole of his allowable costs (as defined in regulation 2(2)) but only 82% of this sum shall be payable if 75% of the estimate of 82% of the allowable costs is paid as a lump sum before the works begin or, in the case of works lasting longer than 3 months, by instalments during the carrying out of the works (regulations 3 and 9(a)). Where the works are initiated by the authority and the authority also undertakes the protective measures the undertaker shall pay 18% of the allowable costs (regulation 4). Where the undertaker requests the authority to move his apparatus solely because of a change in the type of road construction, he is liable to pay the whole of the allowable costs (regulation 5). In the case of works initiated by a person other than an authority in its capacity as such or an undertaker, the foregoing provisions apply to protective measures depending on whether they are taken by the authority or the undertaker but allowance must be made in full for any contribution agreed to be made towards the cost of those measures (regulation 6).

An undertaker is not liable for costs in relation to providing space in, or strengthening of, a bridge to accommodate his apparatus (regulation 7(1)) and cannot recover costs where he has placed his apparatus in the road after the authority has given him statutory notice of his intention to carry out works (regulation 7(2)). Provision is made requiring the undertaker to give credit for any gain received by him from betterment of his apparatus or deferment of the need to renew his apparatus resulting from protective measures taken (regulation 8). Further provision is made as to the timing and manner of payment (regulation 9(b)) and exclusions (regulation 10).

A copy of the Code may be inspected during business hours at New St Andrew’s House, Edinburgh and may be purchased through HMSO.